



Comptroller General  
of the United States

Washington, D.C. 20548

1227310

## Decision

**Matter of:** Canadian Commercial Corporation/Heroux, Inc.

**File:** B-253278

**Date:** September 3, 1993

Dennis A. Adelson, Esq., and Robert Allen Evers, Esq., Schnader, Harrison, Segal & Lewis, for the protester. Ricke D. Hamilton, Esq., and Gregory H. Petkoff, Esq., Department of the Air Force, and John N. Ford, Esq., Defense Contract Audit Agency, for the agency. John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

The Defense Contract Audit Agency's (DCAA) certification pursuant to section 9095 of the Department of Defense (DOD) Appropriations Act, which authorizes DOD depots to submit proposals to repair aircraft components, that a price proposal submitted by a depot included comparable estimates of all direct and indirect costs at the depot's proposed price of \$14.1 million was unreasonable, where DCAA audited the depot's price proposal, and concluded that the proposal, considering all direct and indirect costs and comparability adjustments, was understated by \$1.3 million and should be adjusted upwards to \$15.4 million.

### DECISION

Canadian Commercial Corporation/Heroux, Inc. (Heroux) protests a work assignment to the Department of the Air Force, Ogden Air Logistics Center, Financial Management Plans and Program Division (FMP), for the repair and overhaul of aircraft landing gear and landing gear components. Heroux contends that FMP's cost was not properly evaluated and certified in the source selection.<sup>1</sup> The work assignment

<sup>1</sup>Heroux also argues that improper discussions were held with FMP regarding its price proposal, that FMP gained an unfair competitive advantage because certain FMP personnel participated in the drafting of the solicitation, and that the Air Force personnel who evaluated FMP's proposal have a conflict of interest and are biased. Because we sustain the protest (continued...)

was made under request for proposals (RFP) No. F42600-92-R-2053, issued by the Department of the Air Force, on which FMP and various private firms, including Heroux, submitted proposals.

We sustain the protest.<sup>2</sup>

This competition was conducted pursuant to statutory authorization contained in the Department of Defense (DOD) Appropriations Act, 1993, Pub. L. No. 102-396, § 9095, 106 Stat. 1876, 1924 (1992) (Appropriations Act) and the National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102-484, § 381, 106 Stat. 2315, 2392 (1992). These statutes permit DOD to acquire the repair of aircraft components through competition between DOD depot maintenance activities and private firms with the proviso that the Defense Contract Audit Agency (DCAA) "certify that the successful bids include comparable estimates of all direct and indirect costs for both public and private bids."

The RFP contemplated the award of a firm, fixed-price contract with certain cost reimbursable elements, for a base year with two 1-year options. The RFP requested the submission of technical, cost/price, and past performance proposals, and contained detailed instructions regarding the preparation of the proposals. The RFP required that the cost/price proposal include, among other things, "enough information to judge if the estimating methodology is reasonable, to determine [whether] the scope of the estimate is realistic, and that all requirements priced in the proposal are complete."

The solicitation also provided that DOD sources may submit proposals in response to the solicitation, and specified that "DOD proposals shall include the amounts for all direct and indirect costs including factors, rates and supporting information as appropriate for audit," and that "[e]ach proposal will be manually adjusted to provide equitable cost comparability." The RFP noted that the Cost Comparability Handbook (CCH), developed by the Defense Depot Maintenance Council Cost Comparability Committee, would be used to

---

<sup>1</sup>(...continued)

and recommend that award be made to Heroux, we need not consider these issues.

<sup>2</sup>A hearing was held in this case at which certain of the issues raised were addressed by the parties. Our conclusions are based on the testimony at the hearing as well as the written submissions of the parties.

manually adjust proposals submitted by DOD sources, and that copies of the handbook would be provided to requesting interested parties.

The RFP provided that award would be made to the responsible offeror whose offer was determined to best meet the needs of the Air Force at a reasonable price, and listed the following evaluation criteria in descending order of importance: management; technical; cost/price; and past performance. The solicitation encouraged offerors to submit their best offers in their initial proposals because the agency intended to make award on the basis of initial proposals without discussions.

The agency received eight proposals by the RFP's November 17, 1992, closing date. The proposals were evaluated by the Source Selection Evaluation Team (SSET), with FMP's proposal receiving an overall score of 74 out of 100 points at a proposed cost of \$14,139,712, and Heroux's proposal receiving an overall score of 76 at a proposed cost of \$15,237,394. The SSET determined that FMP's and Heroux's proposals were acceptable for award without discussions as they had received the highest technical scores and were the lowest priced. FMP's cost proposal was provided by the agency to DCAA, with the request that DCAA "audit and certify that [FMP's] cost proposal . . . is in compliance with the [CCH]."

DCAA found in its audit of FMP's proposal that FMP had understated its costs by \$1,286,863. Approximately \$1,059,569 of this amount resulted from DCAA's determination that FMP's staffing was unrealistic because it was based on a projected 95 percent labor efficiency for the base year and 2 option years of the work assignment. DCAA determined, based on its review of FMP's historical rates for direct labor hours as well as FMP's proposed management plan and manpower projections, that FMP's proposed 95 percent efficiency for direct labor hours would not be attained, and that efficiency rates of 87 percent for the base year, 91 percent for the first option year and 94 percent for the second option year were more likely to be achieved by FMP.<sup>3</sup> This resulted in the addition of a total of 18,040 labor hours to FMP's proposal, which, as mentioned above, had the net effect of increasing FMP's proposed price

---

<sup>3</sup>FMP's labor efficiency for fiscal year 1992, the most recent full year for which data is available, was 84 percent.

by \$1,059,269.<sup>4</sup> The remaining difference between FMP's proposed cost and the cost determined by DCAA (\$227,594) was based on DCAA's determination that FMP had understated its costs by varying amounts in the areas of production overhead, manufacturing support, fringe benefits, and cash awards, and that FMP had failed to comply with the CCH in the preparation of some areas of its proposal. DCAA concluded that the total cost of FMP's proposal, including all direct and indirect costs and cost comparability adjustments per the CCH, was \$15,426,575. Nevertheless, DCAA stated in its audit report that FMP's proposal "was acceptable for evaluation."

The agency reviewed DCAA's audit report, and met with DCAA in order to determine, among other things, the significance of the statement in the audit report that FMP's proposal "was acceptable for evaluation." DCAA informed the Air Force the phrase "acceptable for evaluation" constituted DCAA's certification of FMP's proposal at FMP's proposed price of \$14,139,712. The Air Force, in its source selection, considered FMP's proposal at its proposed price of \$14,139,712, and selected FMP for award as the offeror whose proposal offered the best overall value, given that its proposal was considered essentially technically equal to Heroux's and offered the lowest price.<sup>5</sup>

Heroux protests that DCAA has not complied with the requirement in section 9095 of the Appropriations Act "[t]hat the [DCAA] shall certify that successful bids include comparable estimates of all direct and indirect costs for both public and private bids." Specifically, Heroux contends that DCAA's certification of FMP's proposal at FMP's proposed price of \$14,139,712 was arbitrary and unreasonable in light of DCAA's determination that FMP had understated its proposed costs by \$1,286,863.

---

<sup>4</sup>FMP proposed a total of 192,876 labor hours. DCAA added 18,040 hours to this figure because of its conclusions regarding FMP's proposed efficiency rate, and subtracted 3,054 hours because of errors in FMP's calculations. This resulted in a net upwards adjustment of 14,986 hours, for a total of 207,862 direct labor hours (i.e., FMP's proposed 192,876 labor hours plus DCAA's net adjustment of 14,986 labor hours). Heroux, the incumbent contractor, based its proposal on 232,365 hours.

<sup>5</sup>The Air Force accounted for the DCAA projection of FMP's cost as \$15,426,575 by assigning FMP's proposal a moderate cost risk. The Air Force did not evaluate FMP's cost at this level, which is higher than Heroux's offered price.

DCAA and the Air Force maintain that although DCAA found that FMP had understated its costs by \$1,286,863, FMP's proposed costs were "fairly presented" because they were within 9 percent of the \$15,426,575 which DCAA concluded FMP's proposal, properly priced, should total. The agencies contend that DCAA's certification of FMP's offer as FMP's proposed price of \$14,139,712 was therefore proper and in accordance with section 9095 of the Appropriations Act.

According to DCAA, its certification of FMP's offer "is an audit opinion on the reasonableness of the successful [offer], and not on the [offer] plus or minus audit findings."<sup>6</sup> According to DCAA, the "[c]omparability of a [g]overnment depot's bid with other firms' bids cannot adequately be determined on a bottom line basis," and thus DCAA "auditors [have] substantial discretion to determine when, in their professional opinion, a bid includes comparable costs."

We agree with DCAA's position that, under section 9095 of the Appropriations Act, it was required to determine whether FMP's costs were fairly stated or reasonable in order to certify that FMP's proposal included comparable estimates of all direct and indirect costs. In competitions between DOD entities and private firms, the offer of the DOD entity is more closely analogous to a cost reimbursement type contract offer, rather than the fixed-price offer of the private firm, because the government is not legally obligated to pay a private firm more than the offered price, while the government will pay for any cost overruns by a DOD entity

---

<sup>6</sup>Because of the specific requirement in section 9095 of the Appropriations Act that DCAA certify that successful bids include comparable estimates of all direct and indirect costs, DCAA's role here is unlike the advisory role of DCAA in providing audit recommendations as to the cost realism of offerors' proposals in response to solicitations contemplating the award of cost reimbursement contracts. See, e.g., Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-1 CPD ¶ 16.

from public funds. Hoboken Shipyards, Inc., B-224184.2, Jan. 20, 1987, 87-1 CPD ¶ 70; Newport News Shipbuilding and Dry Dock Co., B-221888, July 2, 1986, 86-2 CPD ¶ 23, aff'd on recon., B-221888.2, Oct. 15, 1986, 86-2 CPD ¶ 428. As such, the certification process associated with these competitions should include a cost realism analysis so that the required comparability certification is based on a reasoned judgment of the actual cost to the government. Id. A cost certification process which only ascertains how the offer was prepared and what elements were contained in the offer, but does not include a review as to the reasonableness and quantum of the cost elements of the offer, renders the certification meaningless. Newport News Shipbuilding and Dry Dock Co., supra. For example, if a DOD entity's proposed costs do not include adequate labor hours or fail to include direct or indirect costs comparable to commercial competitors' costs, the proposal should not be certified at its proposed costs. Id.

In this case, DCAA failed to fulfill the role assigned to the agency by section 9095 of the DOD Appropriations Act. DCAA did not reasonably certify FMP's proposal. Its determination that FMP's proposed costs were "fairly stated" at FMP's proposed price of \$14,139,712 is contradicted by DCAA's own findings presented in its audit report. That report, which is extremely detailed and reflects over 200 hours of DCAA's time, Video Transcript (VT) 14:34:18, found that FMP's costs were understated by \$1,286,863, and concluded that FMP's proposal, properly priced including all direct and indirect costs and comparability adjustments in accordance with the CCH, should total \$15,426,575. The bases of DCAA's conclusions have been substantiated and explained at length by DCAA, with no indication of uncertainty on DCAA's part as to its conclusion that FMP's

---

'The competitions in Newport News Shipbuilding and Dry Dock Co. and Hoboken Shipyards, Inc. were conducted under statutory authority set forth in Title II of the Defense Appropriations Act for fiscal year 1986, Pub. L. No. 99-190. That Act appropriated funds for a test program to acquire the overhaul of four or more vessels by competition between public and private shipyards, and provided in pertinent part:

"The Secretary of the Navy shall certify, prior to award of a contract under this test, that the successful bid includes comparable estimates of all direct and indirect costs for both public and private shipyards."

proposal was understated by \$1,286,863.<sup>8</sup> Although DCAA has explained that the majority of the understatement was due to its rejection of FMP's projected labor hour efficiency rates--a matter of business judgment in DCAA's view--and that because this is a judgmental area DCAA did not want to take FMP out of the competition because it was not a "significant enough" variation, VT 10:15:20; see also 10:16:10; 14:19:22, DCAA firmly maintains that its assessment of FMP's labor efficiency rates is accurate while that of FMP is not, and that because of this FMP's proposal did not include all direct and indirect costs.<sup>9</sup> VT 12:13:58. DCAA states that in order for FMP's proposal to be comparable, it would have to be adjusted upward by \$1,286,863 to \$15,426,575, VT 12:35:58, and that the cost to the government of FMP's performance will approximate \$15,426,575. VT 12:12:45; 12:13:40; 14:35:01; 14:37:52.

Consequently, we conclude that DCAA's certification that FMP's proposal at its proposed price of \$14,139,712 "include[d] comparable estimates of all direct and indirect costs" was unreasonable. Based on the contents of DCAA's audit report, and the testimony of DCAA personnel at the hearing, we conclude that FMP's proposal can only be certified by DCAA as including comparable estimates of all direct and indirect costs at the upward adjusted price of

---

<sup>8</sup>While the DCAA audit report included the statement "DCAA does not approve or recommend prospective costs because the amounts depend partly on factors outside the realm of accounting expertise such as opinions on technical and production matters," the record shows that DCAA is firmly of the view that FMP's costs will approximate \$15,425,575 based on its audit findings. VT 12:12:45; 12:13:40; 12:35:58; 14:37:52.

<sup>9</sup>We note that DCAA's conclusion that FMP's labor efficiency rates were unrealistic is consistent with our Office's findings that the Defense Maintenance Industrial Fund (DMIF), which finances the Air Force's in-house contracts and contract depot maintenance operations:

"suffered losses and experienced a steady increase in its backlog of work primarily because DMIF managers repeatedly based the fund's prices and the size of its work force on productivity estimates that were not attained." Air Force Depot Maintenance: Improved Pricing and Financial Management Practices Needed, GAO/AFMD-93-5, November 17, 1992.



\$15,426,575.<sup>10</sup> Because the certifiable cost of \$15,426,575 is higher than Heroux's firm, fixed price of \$15,237,394, and because Heroux's proposal is at least technically equal to FMP, it is clear from the record that Heroux's offer should have been selected for award under the RFP evaluation scheme.

We sustain the protest.

We recommend that the work assignment to FMP be terminated and award made to Heroux. Heroux is also entitled to the costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1993). In accordance with 4 C.F.R. § 21.6(f), Heroux should submit its certified claim for such costs, detailing the time expended and costs incurred, directly to the agency within 60 days after receipt of this decision.

*for Milton J. Roeder*  
Comptroller General  
of the United States

---

<sup>10</sup>While the Air Force points out that DCAA takes a "conservative" approach to auditing, and argues that DCAA's determination that FMP's proposal was understated was due primarily to DCAA's "business judgment" with regard to FMP's proposed labor efficiency rates, it has neither argued nor shown that DCAA's bases for DCAA's upward adjustment to FMP's costs were unreasonable. Instead, the Air Force argues that it finds FMP's proposed costs, particularly labor hours, to be a more reliable measure of FMP's cost. DCAA, not the Air Force, is vested with the authority to certify FMP's proposed costs; under section 9095 of the Appropriations Act the Air Force is without authority to disregard DCAA's determination of FMP's probable costs.